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## **OFFICE OF GOVERNMENT ETHICS**

**5 CFR Part 2641**

**RIN 3209-AA14**

### **Post-Employment Conflict of Interest Restrictions; Revision of Departmental Component Designations**

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Proposed rule.

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**SUMMARY:** OGE is issuing a proposed rule to revoke the designation of one departmental component of one agency and designate a new bureau as a departmental component for purposes of the one-year post-employment conflict of interest restriction in the United States Code; to revoke the designation of two departmental components of another agency and designate their successor bureau as a departmental component; to change the name of an existing departmental component; and to revoke the designation of a departmental component that was abolished.

**DATES:** Comments are invited and must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, in writing, to OGE on this proposed rule, identified by RIN 3209-AA14, by any of the following methods:

E-Mail: [usoge@oge.gov](mailto:usoge@oge.gov). Include the reference “Proposed Rule Revising Departmental Component Designations” in the subject line of the message.

Fax: 202-482-9237.

Mail/Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attention: Amy E. Braud, Associate Counsel.

Instructions: All submissions must include OGE’s agency name and the Regulation Identifier Number (RIN), 3209-AA14, for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Amy E. Braud, Associate Counsel, General Counsel and Legal Policy Division, Office of Government Ethics, Telephone: 202-482-9300; TTY: 800-877-8339; FAX: 202-482-9237.

## **SUPPLEMENTARY INFORMATION:**

### **A. Substantive Discussion: Revocation and Addition of Departmental Components**

The Director of OGE (Director) is authorized by 18 U.S.C. 207(h) to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c). The representational bar of 18 U.S.C. 207(c) usually extends to the whole of any department or agency in which a former senior employee served in any capacity during the year prior to termination from a senior employee position. However, 18 U.S.C. 207(h) provides that whenever the Director of OGE determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate component of that department or agency. As a result, a former senior employee who served in a “parent” department or agency is not barred by 18 U.S.C. 207(c) from making communications to or appearances before any employees of any designated component of that parent, but is barred as to employees of that parent or of other components that have not been separately designated. Moreover, a former senior employee who served in a designated component of a parent department or agency is barred from communicating to or making an appearance before any employee of that component, but is not barred as to any employee of the parent or of any other component.

Under 18 U.S.C. 207(h)(2), component designations do not apply to persons employed at a rate of pay specified in or fixed according to subchapter II of 5 U.S.C. chapter 53 (the Executive Schedule). Component designations are listed in appendix B to 5 CFR part 2641.

The Director of OGE regularly reviews the component designations and determinations and, in consultation with the department or agency concerned, makes such additions and deletions as are necessary. Specifically, the Director “shall, by rule, make or revoke a component designation after considering the recommendation of the designated agency ethics official.” 5 CFR 2641.302(e)(3). Before designating an agency component as distinct and separate for purposes of 18 U.S.C. 207(c), the Director must find that there exists no potential for use of undue influence or unfair advantage based on past Government service, and that the component is an agency or bureau, within a parent agency, that exercises functions which are distinct and separate from the functions of the parent agency and from the functions of other components of that parent. 5 CFR 2641.302(c)(1).

Pursuant to the procedures prescribed in 5 CFR 2641.302(e), two departments have forwarded written requests to OGE to amend their listings in appendix B. After carefully reviewing the requested changes in light of the criteria in 18 U.S.C. 207(h) as implemented in 5 CFR 2641.302(c), OGE is proposing to grant these requests and amend appendix B to 5 CFR part 2641 as explained below.

The Department of Health and Human Services has requested that OGE remove the Administration on Aging (AoA) from its list of component designations and designate in its place the Administration for Community Living as a distinct and separate component of the Department of Health and Human Services for purposes of 18 U.S.C. 207(c). On April 18, 2012, the AoA ceased to be an operating division within the Department of Health and Human Services and became a subcomponent of a new operating division within the Department, the Administration for Community Living.

The mission of the Administration for Community Living is to maximize the self-determination, well-being, and health of older adults, people with disabilities, and their families and caregivers. The Administration for Community Living is the primary entity within the Department to direct development, administration, and advancement of aging and disability programs.

In addition to the AoA, the Administration for Community Living is composed of the Administration on Intellectual and Developmental Disabilities and the Center for Disability and Aging Policy. The Administration on Intellectual and Developmental Disabilities advises the Secretary of the Department of Health and Human Services on issues that relate to individuals who have intellectual and developmental disabilities. It provides support to the States and to local communities for programs that increase the independence and productivity of these individuals. The Center for Disability and Aging Policy plans and oversees the implementation of policies, programs, and special initiatives that address the needs of older Americans and persons with disabilities.

According to the Department of Health and Human Services, the Administration for Community Living exercises functions that are distinct and separate from the functions of the parent Department and from every other agency within the Department.

The Department of the Treasury has requested that OGE remove the Financial Management Service (FMS) and the Bureau of Public Debt (BPD) from its list of component designations and in their place designate the Bureau of the Fiscal Service as a distinct and separate component of the Department of the Treasury for purposes of 18 U.S.C. 207(c). The Department of the Treasury consolidated FMS and BPD into a new entity, the Bureau of the Fiscal Service. This consolidation was effective on

October 7, 2012. See Treas. Order 136-01 (October 7, 2012). The new bureau will carry out the functions of the FMS and the BPD, which include borrowing the money needed to operate the Federal government, administering the public debt, receiving and disbursing public monies, and maintaining government accounts.

According to the Department of the Treasury, the functions of the Bureau of the Fiscal Service are distinct and separate from the functions of the parent Department and from every other agency within the Department. This distinction was previously recognized when OGE designated its predecessor bureaus, the FMS and the BPD, as components for purposes of 18 U.S.C. 207(c).

Accordingly, OGE is proposing to grant the request of the Department of the Treasury and is proposing to amend the Department of the Treasury listing in appendix B to part 2641 to remove the FMS and the BPD from the component designation list and to designate the Bureau of the Fiscal Service as a new component as discussed.

The Department of the Treasury has also requested that OGE revise the name of one component currently listed in appendix B to part 2641, the Bureau of the Mint. According to the Department, since the 1992 amendments to 31 U.S.C. 304, the statutory name, and the name used in all official publications, of this bureau is the “United States Mint.” OGE is proposing to amend the Department of the Treasury listing in appendix B to reflect the current name of this component.

Additionally, the Department of the Treasury has requested that OGE remove the Office of Thrift Supervision (OTS) from its list of component designations. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111-203, 124 Stat. 1376, all OTS functions were distributed to the Office of

the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Bureau of Consumer Financial Protection. Under Title III of the Dodd-Frank Act, all OTS functions relating to Federal savings and loan associations and the rulemaking authority of OTS relating to all savings associations, both Federal and State, were transferred to the Office of the Comptroller of the Currency as of July 21, 2011. Also as of July 21, 2011, the other functions of OTS were transferred to the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Bureau of Consumer Financial Protection. Pursuant to Section 313 of the Dodd-Frank Act, OTS was abolished 90 days after the date of the transfer of its functions to other agencies.

Because OTS has been abolished, OGE is proposing to grant the request of the Department of the Treasury and is proposing to amend the Department of the Treasury listing in appendix B to part 2641 to remove OTS from the component designation list. The Office of the Comptroller of the Currency has been designated as a component since January 1, 1991 and would remain designated as a component.

As indicated in 5 CFR 2641.302(f), a designation “shall be effective on the date the rule creating the designation is published in the Federal Register and shall be effective as to individuals who terminated senior service either before, on or after that date.” Initial designations were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B. The new component designations made in this proposed rule, as well as the name corrections being reflected herein (which do not affect the underlying component designation date), would be effective on the date the final rule is published in the Federal Register.

As also indicated in 5 CFR 2641.302(f), revocation is effective 90 days after the effective date of the rule that revokes the designation. Accordingly, the component designation revocations made in this proposed rule would take effect 90 days after the date the final rule is published in the Federal Register. Revocations are not effective as to any individual terminating senior service prior to the expiration of the 90-day period.

## **B. Matters of Regulatory Procedure**

### Regulatory Flexibility Act

As Director of OGE, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal departments and agencies and current and former Federal employees.

### Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this proposed rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

### Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this proposed rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State,



local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

#### Congressional Review Act

OGE has determined that this proposed rulemaking involves a non-major rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law at the same time the final rulemaking document is sent to the Office of the Federal Register for publication in the Federal Register.

#### Executive Order 12866

In proposing this rule, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This proposed rule has not been reviewed by the Office of Management and Budget under Executive Order 12866 since it deals with agency organization, management, and personnel matters and is not “significant” thereunder.

#### Executive Order 12988

As Director of OGE, I have reviewed this proposed amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

## **List of Subjects in 5 CFR Part 2641**

Conflict of interests, Government employees.

Approved: June 2, 2014.

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**Walter M. Shaub, Jr.**

Director, Office of Government Ethics.

- Accordingly, for the reasons set forth in the preamble, OGE proposes to amend 5 CFR part 2641 as follows:

### **PART 2641--POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS**

- 1. The authority citation for part 2641 continues to read as follows:

**Authority:** 5 U.S.C. app. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 CFR 42547, 3 CFR, 1990 Comp., p. 306.

- 2. Appendix B to part 2641 is amended by revising the listings for the Department of Health and Human Services and the Department of the Treasury to read as follows:

**Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)**

\* \* \* \* \*

Parent: Department of Health and Human Services

Components:

Administration on Aging (effective May 16, 1997; expires 90 days after the date of publication of the final rule in the Federal Register).

Administration for Children and Families (effective January 28, 1992).

Administration for Community Living (effective upon publication of the final rule in the Federal Register).

Agency for Healthcare Research and Quality (formerly Agency for Health Care Policy and Research) (effective May 16, 1997).

Agency for Toxic Substances and Disease Registry (effective May 16, 1997).

Centers for Disease Control and Prevention (effective May 16, 1997).

Centers for Medicare and Medicaid Services (formerly Health Care Financing Administration).

Food and Drug Administration.

Health Resources and Services Administration (effective May 16, 1997).

Indian Health Service (effective May 16, 1997).

National Institutes of Health (effective May 16, 1997).

Substance Abuse and Mental Health Services Administration (effective May 16, 1997).

\* \* \* \* \*

Parent: Department of the Treasury

Components:

Alcohol and Tobacco Tax and Trade Bureau (effective November 23, 2004).

Bureau of Engraving and Printing.

Bureau of the Fiscal Service (effective upon publication of the final rule in the Federal Register).

Bureau of the Public Debt (expires 90 days after the date of publication of the final rule in the Federal Register).

Comptroller of the Currency.

Financial Crimes Enforcement Center (FinCEN) (effective January 30, 2003).

Financial Management Service (expires 90 days after the date of publication of the final rule in the Federal Register).

Internal Revenue Service.

Office of Thrift Supervision (expires 90 days after the date of publication of the final rule in the Federal Register).

United States Mint (formerly listed as Bureau of the Mint).

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- 3. Appendix B to part 2641 is further amended by removing the Administration on Aging from the listing for the Department of Health and Human Services and by

removing the Bureau of the Public Debt, the Financial Management Service, and the Office of Thrift Supervision from the listing for the Department of the Treasury.

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